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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
REX FLOOR COVERING, INC. and
STANLEY L. REX and DOW HOMES,
INC., LESTER A. DOW and NORMAN
E. BAILEY,

Appellants,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos. 77-176 and 77-188

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for the alleged violation of Sections 8.02(3), 8.02(5), and 8.05(1) of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, at an informal hearing on March 29, 1978 in Seattle, Washington. David Akana presided.

Appellant Norman Bailey appeared pro-se and as an employee of Dow Homes, Inc.; respondent appeared by and through its attorney, Keith D. McGoffin. Appellants Stanley Rex and Rex Floor Covering, Inc.,

1 did not appear.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, the Board makes
4 these

5 FINDINGS OF FACT

6 I

7 Pursuant to RCW 43.21B.260, respondent has filed with the
8 Board a certified copy of its Regulation I and amendments thereto
9 which are noticed.

10 II

11 On November 14, 1977 at 3:55 p.m., respondent's inspector saw
12 an outdoor fire on certain real property located at 9919 N.E. 116th
13 Street in Kirkland, Washington. The inspector took several photographs
14 of the four foot diameter fire and noted that the contents being burned
15 therein included scrap lumber, cardboard and "linoleum." He observed
16 bluish smoke and a "teeny amount" of black smoke. The inspector then
17 contacted appellant Dow Homes, Inc.'s foreman, Norman Bailey, who
18 immediately put out the fire. The fire was ignited by appellant
19 Dow Homes, Inc.'s employees.

20 For the foregoing event, appellants were issued three notices
21 of violation for the alleged violations of Sections 8.02(3), 8.02(5),
22 and 8.05(1) and for which a \$250 civil penalty was assessed.

23 III

24 Appellants Stanley Rex and Rex Floor Covering, Inc. were named
25 in the notice of civil penalty on the basis of their ownership of the
26 instant real property as such was disclosed from an examination of the

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 county tax records by respondent's inspector. Testimony showed that
2 appellant Dow is a part owner of the subject property and that
3 appellants Rex and Rex Floor Covering, Inc. have no interest therein.
4 Appellants Stanley Rex and Rex Floor Covering, Inc. were not
5 responsible for the instant fire.

6 Appellant Dow Homes, Inc. through its employees was responsible
7 for the outdoor fire and the burning of prohibited materials therein.

8 IV

9 Appellants did not possess a permit to conduct an outdoor fire
10 from the local fire department or from respondent. Respondent did not
11 show that a permit from the local fire district was required.

12 V

13 Any Conclusion of Law which should be deemed a Finding of Fact
14 is hereby adopted as such.

15 From these Findings the Board makes these

16 CONCLUSIONS OF LAW

17 I

18 Appellants Stanley Rex and Rex Floor Covering, Inc. did not violate
19 Regulation I on the date and at the time alleged.

20 Appellants Lester A. Dow and Norman E. Bailey did not personally
21 violate Regulation I on the date and at the time alleged.

22 II

23 Appellant Dow Homes, Inc. violated Section 8.02(3) on November 14,
24 1977 by causing or allowing an outdoor fire which contained prohibited
25 materials.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 III

2 Appellant Dow Homes, Inc. violated Section 8.05(1) on November 14,
3 1977 by causing or allowing an outdoor fire other than from land
4 clearing or residential burning without prior written approval of
5 respondent.

6 IV

7 Appellant was not shown to have violated Section 8.02(5) by causing
8 or allowing an outdoor fire in violation of "any applicable law, rule
9 or regulation of any governmental agency having jurisdiction over
10 such fire" because respondent did not produce evidence of a rule or
11 ordinance which required a permit from the local fire district for
12 an outdoor fire.

13 V

14 The \$250 civil penalty assessed for the above violations of
15 Regulation I is not reasonable in amount. Considering that this
16 was appellant's first violation, and that such was unintentional, we
17 believe that the penalty should be reduced and that payment of a
18 portion of the remaining penalty should be suspended.

19 VI

20 Any Finding of Fact which should be deemed a Conclusion of
21 Law is hereby adopted as such.

22 From these Conclusions the Board enters this

23 ORDER

24 1. The civil penalties assessed upon appellants Stanley L. Rex,
25 Re: Floor Covering, Inc., Lester A. Dow and Norman E. Bailey are
26 vacated.

27 FINAL FINDINGS OF FACT,
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2. The \$250 civil penalty assessed upon appellant Dow Hores, Inc. is reduced to \$165; provided however, that \$65 of the civil penalty is suspended on condition that appellant Dow Hores, Inc. not violate respondent's regulations for a period of six months after the date of this Order.

DATED this 10th day of April, 1978.

POLLUTION CONTROL HEARINGS BOARD

DAVE J. MOONEY, Chairman

CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER